



2009 SENATE BILL 128

March 18, 2009 - Introduced by Senators PLALE, KREITLOW, HARSORF, HANSEN, KEDZIE, ERPENBACH, OLSEN, SCHULTZ, COWLES, HOLPERIN and LEIBHAM, cosponsored by Representatives SMITH, SUDER, NYGREN, MONTGOMERY, WOOD, VAN ROY, BROOKS, DAVIS, VOS, STASKUNAS, DANOU, PETERSEN, HUBLER, NERISON and MURTHA. Referred to Committee on Commerce, Utilities, Energy, and Rail.

1 **AN ACT to repeal** 196.203 (3) (d), 196.50 (1) (b) 1. and 196.50 (1) (b) 2.; **to**
2 **renumber** 196.50 (1) (b) 3.; **to renumber and amend** 196.203 (1), 196.203 (2)
3 and 196.52 (5) (b); **to amend** 196.07 (1), 196.194 (1), 196.203 (3) (a), 196.203 (3)
4 (b) (intro.), 196.203 (3) (e) 1. (intro.), 196.203 (5), 196.219 (1) (b), 196.219 (2) (a)
5 and 196.219 (3) (g); and **to create** 196.203 (1d), 196.203 (2) (b) and (c), 196.204
6 (8), 196.213 (3), 196.52 (5) (b) 1. and 196.52 (5) (b) 3. and 4. of the statutes;
7 **relating to:** regulation of telecommunications utilities and alternative
8 telecommunications utilities, and public utility accounting filing requirements.

Analysis by the Legislative Reference Bureau

This bill makes the following changes to the regulation of telecommunications utilities (TUs) and alternative telecommunications utilities (ATUs):

Customer contracts. Under current law, the Public Service Commission (PSC) may approve the filing of a tariff by a TU that allows the TU to enter into an individual contract with a customer only if substitute telecommunications services are available to the TU's customers and, if the tariff is not approved, the TU will be disadvantaged in competing for business. To qualify for approval, a tariff must include a condition that the contract is compensatory, and must include any other conditions or procedures that the PSC determines are in the public interest. In

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addition, current law includes requirements for a TU for which a tariff is approved to notify the PSC about the execution and amendment of contracts allowed under the tariff. Current law also allows the PSC to adjust the TU's rates or tariff if the PSC subsequently determines that a contract under an approved tariff is not compensatory. This bill eliminates all of the foregoing requirements and instead allows the PSC to approve a tariff with general terms and conditions allowing a TU to enter into a contract with an individual customer.

ATU certification and regulation. Under current law, a TU is generally exempt from PSC regulation if the PSC certifies that the TU is an ATU. The following four types of TUs may qualify for certification as an ATU: 1) certain cable television operators who also provide telecommunications service; 2) pay telephone service providers; 3) telecommunications resellers; and 4) any other telecommunications provider who offers service that the PSC finds is available from other telecommunications providers within this state. Except for a TU that is a municipality, this bill requires certification as an ATU to be on a statewide basis, and provides that a certification issued before the bill's effective date is considered amended to be a statewide certification. Notwithstanding the requirement for statewide certification, the bill requires the parties to a specified proceeding before the PSC to comply with a settlement agreement regarding an ATU's proposed expansion of service into areas serviced by other TUs.

Although an ATU is generally exempt from regulation, current law allows the PSC, on its own motion or in response to a petition by an interested person, to impose an otherwise inapplicable requirement on an ATU, but only if the PSC determines that imposing the requirement is in the public interest. Under this bill, if an ATU is the fourth type of TU described above, the PSC may not impose an otherwise inapplicable requirement unless the requirement is consistent with a federal law that does the following: 1) prohibits the state from effectively prohibiting a person's ability to provide interstate or intrastate telecommunications service; and 2) allows the state to impose, on a competitively neutral basis, requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers. In addition, the bill allows the PSC to deny certification as the fourth type of ATU described above if the PSC finds that the applicant for certification does not have the financial, managerial, or technical capabilities to provide its proposed service or comply with an otherwise inapplicable requirement that the bill allows the PSC to impose.

Local exchange service competitors. Under current law, with certain exceptions, if a TU is providing local exchange telecommunications service in a municipality, the PSC may not grant a certificate, license, permit, or franchise, to own, operate, manage or control any plant or equipment for furnishing such service, including a certification as an ATU, unless certain requirements are satisfied. The bill eliminates the prohibition, except that the bill requires compliance with the settlement agreement described above.

Subsidization of nonregulated and deregulated activities. Current law generally prohibits a TU from subsidizing an activity that is not subject to PSC

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regulation or is subject to partial deregulation by the PSC, including an activity of an affiliate. Under this bill, the prohibition does not apply to a TU, or an affiliated interest, that offers services in bundles or packages. The bill defines “bundle” as a multiservice retail offering that combines one or more telecommunications services provided by the TU with one or more services provided by an affiliated interest or an unaffiliated third person. The bill define “package” as a multiservice retail offering that combines a telecommunications service provided by the TU with one or more other telecommunications or other services provided by the TU.

Rate increases. Current law imposes requirements for certain TUs with less than 50,000 access lines in use in this state to notify consumers about rate increases and for the PSC to approve such increases. Under this bill, the requirements do not apply to a rate increase for a bundle or package, which are defined as described above.

Affiliated interest contracts. Under current law, the PSC has supervisory jurisdiction over contracts between TUs and affiliated interests as necessary to enforce certain provisions under current law regarding access services, interconnection, and other requirements for protecting consumers and other telecommunications providers. Under this bill, the PSC’s jurisdiction over such contracts is limited to TUs and affiliated interests that do not offer a bundle or package, as defined as described above. However, the bill requires a TU that offers a bundle or package to provide copies of contracts with affiliated interests if the PSC requests the copies in a complaint proceeding and if the copies are necessary to investigate violations of the foregoing provisions. In addition, the bill requires any contract between a TU and an affiliated interest to specify certain information, including the services furnished under the contract; the properties or rights purchased, leased, or exchanged under the contract; and the contract’s rates, terms, and conditions. Also, the bill requires a TU retain a copy of such contracts for three years.

Finally, the bill changes the deadline by which public utilities must file annual accounting balance sheets with the PSC. This requirement generally applies to any type of public utility, including a TU that is not an ATU. The bill changes the deadline from April 1 to May 1.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

- 1 **SECTION 1.** 196.07 (1) of the statutes is amended to read:
2 196.07 (1) Each public utility shall close its accounts annually on December 31
3 and promptly prepare a balance sheet of that date. On or before the following April

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1 May 1 every public utility shall file with the commission the balance sheet together
2 with any other information the commission prescribes, verified by an officer of the
3 public utility. The commission, for good cause shown, may extend the time for filing
4 the balance sheet and prescribed information.

5 **SECTION 2.** 196.194 (1) of the statutes is amended to read:

6 196.194 (1) TELECOMMUNICATIONS UTILITIES. ~~Except as provided in this~~
7 ~~subsection, nothing~~ Nothing in this chapter prohibits the commission from
8 approving the filing of a tariff ~~which permits~~ with general terms and conditions
9 allowing a telecommunications utility to enter into an individual contract with an
10 individual customer ~~if substitute telecommunications services are available to~~
11 ~~customers or potential customers of the telecommunications utility and the absence~~
12 ~~of such a tariff will cause the telecommunications utility to be disadvantaged in~~
13 ~~competing for business. A tariff filed under this subsection shall include the~~
14 ~~condition that any such contract shall be compensatory as determined under s.~~
15 ~~196.204 (5) and (6). The tariff shall include any other condition and procedure~~
16 ~~required by the commission in the public interest. Within 20 days after a contract~~
17 ~~authorized under this subsection or an amendment to such a contract has been~~
18 ~~executed, the telecommunications utility shall submit to the commission written~~
19 ~~notice of the general nature of the contract and the parties to the contract. Upon~~
20 ~~request, the commission shall inform a person, or direct that the person be informed,~~
21 ~~that notice has been received by the commission of execution of a contract under this~~
22 ~~subsection. Within 6 months after receiving substantial evidence that a contract~~
23 ~~may be noncompensatory, or upon its own motion, the commission shall investigate~~
24 ~~and determine whether the contract is compensatory. If the commission determines~~
25 ~~that the contract is noncompensatory, the commission may make appropriate~~

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1 ~~adjustments in the rates or tariffs of the telecommunications utility that has entered~~
2 ~~into the contract, in addition to other remedies under this chapter. The dollar~~
3 ~~amount of the adjustment may not be less than the amount by which the contract was~~
4 ~~found to be noncompensatory.~~

5 **SECTION 3.** 196.203 (1) of the statutes is renumbered 196.203 (1g) and amended
6 to read:

7 196.203 (1g) Alternative telecommunications utilities are exempt from all
8 provisions of ch. 201 and this chapter, except as provided in this section and except
9 that an alternative telecommunications utility that is a local government
10 telecommunications utility, ~~as defined in s. 196.204 (5) (ag) 1.,~~ is subject to s. 196.204
11 (5).

12 **SECTION 4.** 196.203 (1d) of the statutes is created to read:

13 196.203 (1d) In this section, "local government telecommunications utility"
14 has the meaning given in s. 196.204 (5) (ag) 1.

15 **SECTION 5.** 196.203 (2) of the statutes is renumbered 196.203 (2) (a) and
16 amended to read:

17 196.203 (2) (a) No person may commence providing service as an alternative
18 telecommunications utility unless the person petitions for and the commission issues
19 a ~~determination~~ certification that the person is an alternative telecommunications
20 utility.

21 **(6)** The commission shall maintain information on authorized certified
22 alternative telecommunications utilities and on applicants for alternative
23 telecommunications utility status certification and make that information available
24 to any person, upon request.

25 **SECTION 6.** 196.203 (2) (b) and (c) of the statutes are created to read:

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1 196.203 (2) (b) Except for an alternative telecommunications utility that is a
2 local government telecommunications utility, certification as an alternative
3 telecommunications utility shall be on a statewide basis and any certification issued
4 by the commission before the effective date of this paragraph [LRB inserts date],
5 to an alternative telecommunications utility that is not a local government
6 telecommunications utility is considered amended to be a statewide certification.
7 This paragraph does not alter any conditions of a certification issued before the
8 effective date of this paragraph [LRB inserts date], except for geographic scope.

9 (c) The commission may deny a petition for certification as an alternative
10 telecommunications utility described in s. 196.01 (1d) (f) if the commission finds that
11 the petitioner does not have the financial, managerial, or technical capabilities to
12 provide its proposed services or to comply with conditions that the commission is
13 authorized to impose under sub. (3) (a).

14 **SECTION 7.** 196.203 (3) (a) of the statutes is amended to read:

15 196.203 (3) (a) In response to a petition from any interested person, or upon
16 its own motion, the commission shall determine whether the public interest requires
17 that any provision of ch. 201 or this chapter be imposed on a person providing or
18 proposing to provide service as an alternative telecommunications utility in a
19 relevant market. In making this determination, the commission may consider
20 factors including the quality of service, customer complaints, concerns about the
21 effect on customers of local exchange telecommunications utilities and the extent to
22 which similar services are available from alternative sources. The commission may
23 impose a condition under this paragraph on the certification of an alternative
24 telecommunications utility described in s. 196.01 (1d) (f) only if the condition is
25 consistent with 47 USC 253 (a) and (b).

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1 **SECTION 8.** 196.203 (3) (b) (intro.) of the statutes is amended to read:

2 196.203 **(3)** (b) (intro.) The commission may not deny a petition filed under par.
3 (a) by a provider of cable service for alternative telecommunications utility ~~status~~
4 certification in a particular geographical area as not being in the public interest if
5 basic local exchange service is provided in the same geographical area by any of the
6 following:

7 **SECTION 9.** 196.203 (3) (d) of the statutes is repealed.

8 **SECTION 10.** 196.203 (3) (e) 1. (intro.) of the statutes is amended to read:

9 196.203 **(3)** (e) 1. (intro.) If a provider of cable service files a petition under par.
10 (a) for alternative telecommunications ~~status~~ utility certification to offer local
11 exchange service, as defined in s. ~~196.50 (1) (b) 1.~~ 196.219 (1) (b), in a geographical
12 area served by a telecommunications utility with less than 50,000 access lines in use
13 in this state on September 1, 1994, or at any time thereafter, the commission may not
14 deny the petition as not being in the public interest and shall do any of the following:

15 **SECTION 11.** 196.203 (5) of the statutes is amended to read:

16 196.203 **(5)** The commission may establish a reasonable fee schedule and may
17 assess an alternative telecommunications utility to cover the cost of making a
18 certification or other determination under this section.

19 **SECTION 12.** 196.204 (8) of the statutes is created to read:

20 196.204 **(8)** (a) In this subsection:

21 1. "Affiliated interest" has the meaning given in s. 196.52 (1).

22 2. "Bundle" means a multiservice retail offering by a telecommunications
23 utility that combines one or more telecommunications services provided by the
24 telecommunications utility with one or more services provided by an affiliated
25 interest of the telecommunications utility or by an unaffiliated 3rd party.

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1 3. “Package” means a multiservice retail offering by a telecommunications
2 utility that combines a telecommunications service provided by the
3 telecommunications utility with one or more other telecommunications or other
4 services provided by the telecommunications utility.

5 (b) This section does not apply to a telecommunications utility, or any affiliated
6 interest of a telecommunications utility, that offers services in a bundle or package.

7 **SECTION 13.** 196.213 (3) of the statutes is created to read:

8 196.213 (3) This section does not apply to a rate increase for a bundle, as
9 defined in s. 196.204 (8) (a) 2., or package, as defined in s. 196.204 (8) (a) 3.

10 **SECTION 14.** 196.219 (1) (b) of the statutes is amended to read:

11 196.219 (1) (b) “Local exchange service” ~~has the meaning given in s. 196.50 (1)~~
12 (b) 1. includes access service, basic local exchange service, and business access line
13 and usage service within a local calling area.

14 **SECTION 15.** 196.219 (2) (a) of the statutes is amended to read:

15 196.219 (2) (a) Notwithstanding any exemptions identified in this chapter
16 except sub. (3) (g) and s. 196.202, a telecommunications utility or provider shall
17 provide protection to its consumers under this section unless exempted in whole or
18 in part by rule or order of the commission under this section. The commission shall
19 promulgate rules that identify the conditions under which provisions of this section
20 may be suspended.

21 **SECTION 16.** 196.219 (3) (g) of the statutes is amended to read:

22 196.219 (3) (g) Provide services, products or facilities in violation of s. 196.204.
23 This paragraph does not apply to a telecommunications utility, or any affiliated
24 interest, as defined in s. 196.52 (1), of a telecommunications utility, that offers

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1 services in a bundle, as defined in s. 196.204 (8) (a) 2., or package, as defined in s.
2 196.204 (8) (a) 3.

3 **SECTION 17.** 196.50 (1) (b) 1. of the statutes is repealed.

4 **SECTION 18.** 196.50 (1) (b) 2. of the statutes is repealed.

5 **SECTION 19.** 196.50 (1) (b) 3. of the statutes is renumbered 196.50 (1) (bm).

6 **SECTION 20.** 196.52 (5) (b) of the statutes is renumbered 196.52 (5) (b) 2. and
7 amended to read:

8 196.52 (5) (b) 2. For a telecommunications utilities utility that does not offer
9 a bundle or package, the commission shall have supervisory jurisdiction over the
10 terms and conditions of contracts and arrangements under this section as necessary
11 to enforce ss. 196.204 and 196.219.

12 **SECTION 21.** 196.52 (5) (b) 1. of the statutes is created to read:

13 196.52 (5) (b) 1. In this paragraph:

14 a. "Bundle" has the meaning given in s. 196.204 (8) (a) 2.

15 b. "Package" has the meaning given in s. 196.204 (8) (a) 3.

16 **SECTION 22.** 196.52 (5) (b) 3. and 4. of the statutes are created to read:

17 196.52 (5) (b) 3. Except for subd. 4., this section does not apply to a
18 telecommunications utility, or any affiliated interest of a telecommunications utility,
19 that offers a bundle or package, except that such a telecommunications utility shall
20 provide a copy of any contract or arrangement with an affiliated interest that is
21 necessary for an investigation of a violation of s. 196.219, other than s. 196.219 (3)
22 (g), and has been requested in a complaint proceeding by the commission.

23 4. Any contract or arrangement between a telecommunications utility and an
24 affiliated interest shall specify the services furnished, and the properties, rights, or
25 things purchased, sold, leased, or exchanged, under the contract or arrangement,

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1 and shall specify the rates, terms, and conditions for such furnishing, purchase, sale,
2 lease, or exchange. A telecommunications utility shall retain a copy of any contract
3 or arrangement with an affiliated interest for 3 years after the termination date of
4 the contract or arrangement.

5 **SECTION 23. Nonstatutory provisions.**

6 (1) Notwithstanding the treatment of sections 196.203 (2) (b) and 196.50 (1) (b)
7 1., 2., and 3. of the statutes by this act, the parties to the proceeding before the Public
8 Service Commission in docket 3355-NC-104 shall comply with the settlement
9 agreement accepted by the commission in that proceeding.

10 **SECTION 24. Initial applicability.**

11 (1) The treatment of section 196.194 (1) of the statutes first applies to tariffs
12 filed on the effective date of this subsection.

13 (END)